IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1835

RUTH A. WOLD,

Petitioner,

vs.

ORIN W. WOLD and GEORGE R. WOLD,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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To The Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

RUTH A. WOLD, Petitioner, petitions the Court to issue a writ of certiorari to review

an order of the United States Court of Appeals for the Seventh Circuit entered on March 12th, 1979, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, in federal question and diversity litigation, dismissing plaintiff's complaint for specific performance of a premarital contract and a bill to quiet title on the ground that the principles of comity and federalism required the court to abstain from exercising jurisdiction, the Court of Appeals doing so "under the Younger abstention doctrine" and the "'wise judicial administration' doctrine of the Colorado River case".

This petition is due to be filed on or before June 10th, 1979.

The Court of Appeals wrote an unpublished order not to be cited per circuit rule 35. It is set out as Appendix "A".

JURISDICTION

The jurisdiction of this Court is based on United States Code, Title 28, Section 1354(1). The jurisdiction of the district court is based on United States Code, Title 28, Sections 1331 and 1332. The jurisdiction of the Court of Appeals is based on United States Code, Title 28, Section 1291.

QUESTIONS PRESENTED FOR REVIEW

In the language used by the Court of Appeals, the questions presented for review are:

Whether analyzed in terms of the Younger abstention doctrine (Younger v. Harris, 401

U.S. 37 (1971)) or in terms of the "wise judicial adminstration" doctrine of the Colorado River case (Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976)), dismissal of this civil federal question and diversity suit, with assessment of costs against petitioner, was appropriate.

We prefer our own statement:

Whether by the conduct of the district court in dismissing this suit for specific performance of a premarital contract and a bill to quiet title, causes of action not pending in any other court, and the conduct of the Court of Appeals in affirming the judgment of dismissal, the federal courts have wrongfully abstained from exercising their jurisdiction, and said action is treason to the Constitution of the United

States, depriving petitioner of her procedural rights and property without due process of law, and denying to her the protection and equal protection of the laws, by the United States by its Judicial Department, in violation of her federal rights under the Fifth Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States, Article III, Section 1:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Section 2:

> "The judicial Power shall extend to all Cases, in Law and Equity, aris-

ing under this Constitution, the Laws of the United States * * * ; —to Controversies * * * —between Citizens of different States."

" * * . In all the other Cases before mentioned, the supreme court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."

United States Code, Title 28, Section 1331:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States."

United States Code, Title 28, Section 1332:

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controvery exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—(1) citizens of different States; * * * ."

United States Code, Title 28, Section 1291:

"The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, * * * , except where a direct review may be had in the Supreme Court."

United States Code, Title 28, Section 1254:

"Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

"(1. By writ of certiorari upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree; * * * ."

The Constitution of the United States, Amendment V:

"No person shall * * * be deprived of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

This case, in its simpliest aspect, is merely a diversity suit for specific performance of a premarital contract between husband and wife, entered into on the eve of their marriage, for and in consideration of marriage and other considerations stated therein, conveying certain lands in McHenry County, Illinois, to the petitioner, the prospective wife, and a bill to quiet title to said lands in her, the now wife.

This suit, in its broadest aspect, challenges the validity and finality of a judgment of the Circuit Court of McHenry County, Illinois, in other litigation between the parties, not involving the premarital agreement, but involving the same property, and the validity of a judicial

issued under it, purporting to reconvey title to said property acquired by the wife from her husband by deeds executed and delivered to her after marriage, on the ground that she was a constructive trustee of said property under said deeds, having received title to them under a purported oral promise to reconvey the title to the husband on demand, which she has refused to do.

The Statement of the Case made by the Court of Appeals is substantially correct, but it is incorrect to the extent that it indicates that the Indenture and Premarital Agreement dated September 19th, 1968, was involved in the litigation in the State court before October 3rd, 1974. That deed was not involved in the litigation leading to the order of October 3rd, 1974, that

litigation dealing with two deeds dated May 15th, 1969, and two deeds dated August 28th, 1969, the only deeds under attack in the pleadings in the consolidated case in the circuit court.

The Statement of the Case made by the Court of Appeals is also incorrect in that it indicates that the State court has merely failed to act on petitioner's motion filed June 13th, 1977, to vacate the orders of October 3rd, 1974, and May 13th, 1977, and the two orders of May 20th, 1977, and to revoke the Judicial Deed dated May 20th, 1977. It has simply ignored the motion and continued to treat the order of October 3rd, 1974, as a final enforceable and appealable order, and the Judicial Deed as a valid deed, and proceeded with other portions of the case, over petitioner's protest.

The Court of Appeals has ignored the following allegations of the complaint in this case, that were called to its attention at Page 30 of the Brief and Argument For Appellant in that Court, reading as follows:

> "Plaintiff has been deprived of her property, and of her right to a prompt and speedy trial, and of her right to due process of law, and of her right to the protection and equal protection of the laws, and of her right to a remedy for injuries and wrongs, by the State of Illinois, by the Circuit Court of McHenry County, Illinois, in said litigation, in violation of her fundamental rights and of her Federal rights under the 14th, Amendment, Section 1, To The Constitution of the United States, and of her State rights under Article I, Section 2, and Section 12, of the Constitution of the State of Illinois, which is, in itself, a violation of her Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States (A D1 par 50 p 32). In addition, the Circuit Court of McHenry County, Illinois, has failed to pass on any of the Federal and State constitutional questions raised by Plaintiff in the consolidated case, but has simply

denied all her motions and petitions for relief, and this failure is itself a denial of due process of law, and of the protection and equal protection of the laws, and of a remedy for an injury and wrong, in violation of her Federal rights under the 14th Amendment, Section 1, to the Constitution of the United States, and under Article I, Section 2, and Section 12, of the Constitution of the State of Illinois(A D1 par 51 p 32)."

The United States Court of Appeals has overlooked another point. The complaint was filed on October 27th, 1977. At that time the Illinois 10-year Statute of Limitations had not run on petitioner's cause of action for specific performance of the premarital contract of September 19th, 1968, which became effective on her marriage on September 21st, 1968. Unless the Statute of Limitations was tolled by the pendency of this suit in the Federal courts or is otherwise not applicable, petitioner has been damaged by the dismissal of her suit.

ARGUMENT AMPLIFYING REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

This suit is primarily a diversity suit for specific performance of a premarital agreement and to quiet title to real estate, conventional actions which are not pending in any other court, and legitimate means of testing the validity and finality of a judgment of any court, and the district court has no right to abstain from exercising its jurisdiction, and the Judgment of February 1st, 1978, dismissing it for the stated reason that "To grant plaintiff relief, given the status of her State case, would violate every precept of comity and federalism" because "the State Court should be given every opportunity to adjudicate the federal claims presently pending" is treason to the Constitution of the United States, depriving her

her of her procedural rights and property without due process of law, and denying to her the protection and equal protection of the laws, by the United States by its Judicial Department, in violation of her federal rights under the Fifth Amendment to the Constitution of the United States, and this petition for writ of certiorari should be granted, and the judgments below reversed and the cause should be remanded with directions, on the basis of the constitutional and statutory provisions cited, and the decision of this Court in Cohen v. Virgina, 6 Wheat (US) 264, 404, 5 L ed 257, 291, where Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is not given, then to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is exercise our best judgment, and conscientiously to perform our duty."

We see no good reason why the district courts, and the Court of Appeals, should not be bound by the same duty.

By what authority can a district court and the Court of Appeals refuse to entertain jurisdiction of a suit for specific performance of a premarital agreement, and a bill to quiet title to real estate, filed to test the validity and finality of a judgment of a State court, and for an injunction to prevent the enforcement of the judgment, and for dis-

covery, and for damages for a tort, and require a plaintiff in such an action, who by virtue of the Constitution of the United States, and by statute enacted pursuant to that Constitution, is entitled to file it in a district court, to file it in a State court? By what authority may they refer that plaintiff to a State court, that has had ample opportunity to pass on Federal constitutional questions raised by the parties in their litigation in both courts but which has chosen to ignore them, to pass on those constitutional questions?

Petitioner asserts there is none.

The Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 813, case is not applicable because the State court has made no state determination of pertinent

State law, and the Younger v. Harris, 401 U.S. 37(1971), and Huffman v. Pursue, Ltd., 420 U.S. 592 (1974), cases are not applicable because the State civil suit is not a State proceeding, and is not a State civil proceeding, and is not such a State civil proceeding such as were involved in those cases, and is not based on a State statute believed to be unconstitutional.

We are quite certain that this Court never intended those cases to be applicable to private civil litigation, and that as a matter of judicial power and due process of law cannot be extended to this case, and, in any event, the Court of Appeals has usurped the prerogative of this Court to determine the issue.

This petition for a writ of certiorari

should be granted because of the importance of the questions raised, and the need for uniformity in decision in regard to said questions, which can only be determined by a decision of this Court.

The fact that the Court of Appeals has seen fit to write an unpublished order not to be cited per circuit rule 35 is not without significance that it is not sure of the position that it has taken. Petitioner should not be singled out for special treatment either one way or the other.

CONCLUSION

This petition for a writ of certiorari should be granted because of the importance of the constitutional and procedural issues raised.

Petitioner firmly believes that Chief Justice Marshall is right.

Respectfully submitted,

Hugh M Matchett

HUGH M. MATCHETT,

Petitioner's Attorney.

APPENDIX

A

UNITED STATES COURT OF APPEALS
For The Seventh Circuit
Chicago, Illinois 60604

Unpublished Order
Not To Be Cited
Per Circuit Rule 35

Submitted: March 7, 1979
March 12, 1979

Before
Hon. WILBER F. PELL, JR., Circuit Judge
Hon. ROBERT A. SPRECHER, Circuit Judge
Hon. WILLIAM J. BAUER, Circuit Judge

RUTH A. WOLD, Plaintiff-Appellant,	)	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 78-1332	vs.	
ORIN W. WOLD and GEORGE R. WOLD, Defendants-Appellees	)	No. 77-C-3996

John Powers Crowley,
Judge.

ORDER

The issue on this appeal is whether the district court properly held that the principles of comity and federalism required the dismissal of the plaintiff's complaint.

In order to gain a proper understanding of the facts of this intr-family property dispute, it is necessary to review the liti-

gative history of the parties, dating back to 1969 in the state courts. The plaintiff (Ruth) brought her federal suit in 1977, and since the complaint was dismissed, this court must accept the factual allegations of the complaint as true on this appeal. Little v. Walker, 553 F.2d 193 (7th Cir. 1977), cert. denied, 435 U.S. 932 (1978).

It is alleged that Ruth and the defendant Orin entered into a contract in contemplation of marriage in 1968. In return for recited consideration, Orin agreed to and did convey to Ruth certain real property. The deed to this property was not recorded until December 29, 1976.

In 1969, the defendant George, Orin's adult son by a previous marriage, commenced a suit against Orin in the McHenry County, Illinois Circuit Court, seeking a declaration that he, George, owned a one-half interest in the real property which Orin had previously conveyed to Ruth, and that Orin held that interest as a constructive trustee for George.

After Orin left Ruth, he commenced, in April, 1970, an action for divorce against her in the McHenry County Circuit Court. In this suit, Orin also sought a declaration that Ruth held the real property in question as constructive trustee for him, on the ground of undue influence. In August, 1970, Ruth counterclaimed for separate maintenance. In February, 1972, George's earlier constructive trust suit was consolidated with the divorce/separate maintenance suit.

The consolidated case went to trial in April, 1974, before Judge William Gleason.

The issue of the ownership of the property in question was tried first, and in September, 1974, Judge Gleason filed a memorandum opinion, in which he concluded, based on the credibility of the witnesses, that Orin's version of the facts was the truthful one. It was found that Orin had conveyed the property to Ruth because of the impending suit by George, relying on her to reconvey it after the danger had passed. A constructive trust, for the benefit of Orin, was imposed on the property. On October 3, 1974 a decree was entered imposing the constructive trust and ordering Ruth to reconvey the property. The decree concluded with the words, "There is no just reason to delay the enforcement of this Decree." Subsequently, Judge Gleason withdrew from the remaining portions of the case and retired from the bench. Ruth then appealed to the Illinois Appellate Court, which affirmed in Wold v. Wold, 43 Ill. App. 3d 773, 357 N.E. 2d 627 (1976). The Illinois Supreme Court denied leave to appeal.

A judicial deed to the property was issued and delivered to Orin on May 20, 1977, and he recorded it the same day. Ruth filed the most recent in a series of motions to vacate the October 3, 1974 decree on June 13, 1977. Grounds asserted were, inter alia, that the decree is interlocutory; that the Illinois Appellate Court affirmance is a nullity for want of jurisdiction; that the October 3, 1974 decree was obtained through the fraud and perjury of Orin; and that Judge Gleason's withdrawal from the case has the effect of "aborting" the decree, so that the new trial judge is required to redetermine the issues underlying the decree himself. So far as the record shows, this motion is still

pending before the McHenry County Circuit Court.

Ruth's federal suit was commenced on October 27, 1977. Ruth invoked federal question and diversity jurisdiction. In her complaint and amended complaint she sought, inter alia, a declaration that each essential allegation of the complaint was well founded in law and fact; specific performance of the 1968 contract entered in contemplation of marriage; a holding that the October 3, 1974 decree of the McHenry County Circuit Court is interlocutory ans aborted; a holding that the judicial deed is void; and an injunction against the enforcement of the October 3, 1974 decree.

Each of the two defendants moved to dismiss the complaint. By memorandum opinion and judgment dated February 1, 1978, Judge Crowley granted the motions to dismiss and entered judgment for the defendants. Judge Crowley perceived the federal suit as an attempt to interfere with the state court proceeding. Noting that the plaintiff's federal claims were then pending before the state court by virtue of her most recent motion to vacate, Judge Crowley stated that the state court should be given every opportunity to adjudicate the federal claims. Citing Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) the court indicated that to grant relief to the plaintiff would violate every precept of comity and federalism.

Plaintiff filed a timely notice of appeal. Each of the defendants has filed a motion to affirm without oral argument, pursuant to Circuit Rule 15.

It is apparent that the doctrine of res judicata and collateral estoppel are intimately involved in the consideration of this appeal. The plaintiff has already litigated large parts of her claim with respect to the ownership of the property in question in state court, and has taken the matter as far as the Illinois Supreme Court. It is firmly established that a party may not, after receiving an adverse decision in state courts, relitigate the matter in federal courts. England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964). The federal district courts do not assume to exercise what amounts to appellate jurisdiction over state courts. Resolute Insurance Co. v. State of North Carolina, 397 F.2d 586 (4th Cir.), cert. denied, 393 U.S. 978 (1968); Reich v. City of Freeport, 388 F. Supp. 953 (N.D. Ill. 1974), affid, 527 F.2d 666 (7th Cir. 1975).

The plaintiff seeks to avoid this result by contending that the state appellate decisions, obtained as a result of her own appeals, are a nullity, because the appellate courts lacked jurisdiction, since the entire case is still pending at the trial court level.

This argument is unavailing. To the extent that the issues are still pending, so that res judicata is not strictly applicable, the abstention doctrine of the Younger[1] variety comes into play.

1. Younger v. Harris, 401 U.S. 37 (1971). For a discussion of the various types of ab-

The Younger doctrine prohibits, under certain circumstances, federal court interference with pending state proceedings. Comity is the vital consideration behind this doctrine. Juidice v. Vail, 430 U.S. 327 (1977).

The Supreme Court has never gone so far as to decide whether the Younger doctrine applies to private civil litigation, such as the present case. See Trainor v. Hernadez, 431 U.S. 434, 445 n.8 (1977). We do not decide any such broad question in this appeal. But under the circumstances of this case, involving eight years of state court litigation prior to the commencement of the federal suit, in a case involving heavy overtones of res judicata[2] and federal court review of state court determinations, we hold that the Youmger doctrine applies. To grant the relief sought by the plaintiff would reflect negatively on the stat court's ability to adjudicate federal claims. Trainor v. Herndez, supra, 431 U.S. at 446. This court has expressed the need for special respect for the state judicial process, when federal jurisdiction is not invoked until after the commencement of the state litigation. Cousins v. Wigoda, 463 F.2d 603 (7th Cir. 1972).

stention, see Ohio Bureau of Employment Services v. Hodory, 431 U.S. 471, 477 (1977).

2. The Supreme Court has alluded to the res judicata implications of particular applications of the Younger doctrine. Huffman v. Pursue, Ltd., 420 U.S. 592, 607 n.19 (1975).

As was true in Judice v. Vail, supra, the plaintiff has an opportunity to raise her federal claims in the state proceeding, and she will not be permitted to short-circuit the state case by invoking federal jurisdiction.

As mentioned, the Supreme Court has never decided whether the abstention doctrine applies to private civil litigation. Even if it does not, however, dismissal of this suit was still appropriate. Conceptually, this case is similar to Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). In that case, the Supreme Court concluded that none of the branches of the abstention doctrine applied, but affirmed the dismissal of the federal suit anyway for reasons of "wise judicial administration." The court discussed factors favoring dismissal under this doctrine as including the goal of avoiding piecemeal litigation. Another factor was the order in which jurisdiction was obtained. The court also mentioned the rule that the court which first assumes jurisdiction over property may exercise that jurisdiction to the exclusion of other courts. 424 U.S. at 818.

In this case, state court jurisdiction was invoked eight years before the commencement of the federal suit. Parts of the state proceedings are still pending before the state court, and the parts already litigated bear strong overtones of res judicata. It would be difficult to imagine a more appropriate case for dismissal in the name of "wise judicial administration."

Whether analyzed in terms of the Younger

abstention doctrine or in terms of the "wise judicial administration" doctrine of the Colorado River case, dismissal was appropriate in this case. The motions to affirm without oral argument are hereby GRANTED, and the judgment of the United States District Court for the Northern District of Illinois, Eastern Division is hereby AFFIRMED.